



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6740-98

2 December 1999

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlistment of the United States Navy, applied to this Board requesting, in effect, that the reason for his discharge and reenlistment code be changed.
2. The Board, consisting of Messrs. Ensley, Swarens and Caron, reviewed Petitioner's allegations of error and injustice on 1 December 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
  - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
  - b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.
  - c. Petitioner enlisted in the Navy on 5 July 1990 for four years at age 18. At the time of his enlistment, he agreed to

extend for an additional period of 12 months for assignment to the aircrew program.

d. Petitioner was advanced to AEAN (E-3) and served without incident until 27 October 1992 when he was referred to psychiatry by aviation medicine to assess his aeronautical adaptability due to "multiple problems with life stressors which included family advocacy problems and difficulties with superiors." He was seen in a psychiatry clinic on 10 November 1992 and was diagnosed with marital problems. The consultation report noted that Petitioner was seeking a divorce and custody of his two minor children, and that his wife allegedly had at least four affairs. Petitioner reported that he had been put in jail on 18 October 1992 after an argument with his wife, but the charges against him were dropped. The examining psychiatrist stated that he saw no evidence of a personality disorder and noted that Petitioner would be faced with future stresses involving the divorce and custody issues. He advised Petitioner to let his lawyer handle any disputes and recommended that if regulations prohibited him from flying during this period, he should be grounded. Petitioner was found psychiatrically fit for full duty, including restoration of his flight status.

e. On 22 January 1993, Petitioner received a nonjudicial punishment (NJP) for insubordination and failure to obey a lawful order or regulation. Punishment imposed consisted of a forfeiture of \$456, reduction in rate to AEAA (E-2), and 45 days of extra duty.

f. On 18 March 1993, Petitioner was referred to psychiatry for acute depression with occasional suicidal ideation. Petitioner expressed concern over the impending divorce and separation from his two daughters, and his mother's health; and ruminated over the fact that his father had died a year ago. He asserted that he would never hurt himself because of his faith. Petitioner was deemed to have difficulty adjusting to the Navy and with several of life's stressors, but was not thought to be suicidal, homicidal, or psychotic. However, he was diagnosed with a personality disorder, not otherwise specified, with dependent and immature traits. Administrative separation was recommended.

g. On 2 April 1993, Petitioner was notified that he was being considered for separation by reason of convenience of the government due to a personality disorder. He was advised of his procedural rights, waived those rights, and did not object to

the discharge. On 9 April 1993, Petitioner was honorably discharged by reason of "Other Physical/Mental Conditions-Personality Disorder", and was assigned an RE-4 reenlistment code.

h. Petitioner contends that he does not have a personality disorder and that his discharge was based upon an incident at his command in which he received NJP as a result of a verbal confrontation he had with two aircrewmen and a junior officer, both of whom were having affairs with his wife. Petitioner claims he sought legal action against these individuals through his chain of command, but the commanding officer "turned a blind eye" and told him that it was a personal matter between him and his wife. He claims that when he sought assistance from the base chaplain, his qualifications were revoked and he was reassigned. The base legal office gave him no help and told him that any action under the Uniform Code of Military Justice would have to be taken by his command. He claimed that he asked for a hardship discharge, but was told by the commanding officer that such action was unnecessary since he would be receiving an honorable discharge. However, she failed to mention he would not be recommended for reenlistment and assigned an RE-4 reenlistment code.

i. Petitioner has submitted evidence that he is in his final year of college and is a member in good standing in the Army Reserve Officers' Training Corps (ROTC) Program. However, he will be disenrolled from ROTC unless his reenlistment code is changed. He also has submitted a statement from his former wife to the effect that that she caused some of the "cruel" problems during their marriage, and Petitioner had tried to resolve his problems through legal channels but his command just "blew him off." She also says they were divorced after she and his fellow crewmembers let him down.

j. Petitioner has also provided a copy of psychiatric evaluation he underwent on 19 August 1998, which included psychological testing to rule out a personality disorder. The examining psychiatrist concluded that Petitioner did not have a personality disorder at the time of his discharge from the Navy, and does not now have such a disorder or any other mental problem. The psychiatrist opined that the evaluation performed by the Navy was inadequate for a diagnosis of a personality disorder.

k. At enclosure (2), is an advisory opinion provided by Mental Health Services, Naval Medical Center, San Diego, which concluded that there was insufficient evidence in Petitioner's medical record to support a personality disorder diagnosis. The advisory opinion noted the conclusion of the August 1998 mental health evaluation which included psychological testing, also did not support a personality disorder. The mitigating circumstances associated with Petitioner's 22 January 1993 NJP were also noted. The advisory opinion recommends that Petitioner's reenlistment code be changed.

1. Regulations require the assignment of an RE-4 reenlistment code to individuals who are discharged in pay grades E-1 and E-2 and who are not recommended for reenlistment.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board substantially concurs with the comments and recommendation contained in the advisory opinion. Since it appears there was an insufficient basis for the diagnosis of a personality disorder, the reason for Petitioner's discharge was improper. Although Petitioner might have been processed for discharge based on the misconduct adjudicated at the NJP of 22 January 1993, the command did not do so. Therefore, the Board does not believe the reason for separation should be changed for misconduct, but concluded that it should be changed to "best interests of the service."

The Board notes that regulations require the assignment of an RE-4 reenlistment code to individuals who are discharged in pay grades E-2 and E-1. However, the Board notes that he was improperly processed for separation by reason of personality disorder, and the command did not desire to process him due to misconduct. The Board believes that had Petitioner been able to serve through the expiration of his enlistment, he would have been re-advanced to pay grade E-3 and may have qualified for a better reenlistment code. In this regard, his current educational pursuits and good standing in the ROTC Program support that conclusion. Additionally, his ROTC participation leads the Board to believe that an RE-4 reenlistment code is no longer an adequate indicator of his ability to perform useful military service. Therefore, the Board concludes that it would be appropriate to change his reenlistment code to RE-1 as an exception to policy.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 9 April 1993 he was discharged by reason of "Secretary Plenary Authority" with an RE-1 reenlistment code vice the reason of "Other Physical/Mental Conditions-Personality Disorder" and the RE-4 reenlistment code now of record. This corrective action should include the issuance of a new DD Form 214.

b. That any material or entries inconsistent with or relating to the board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

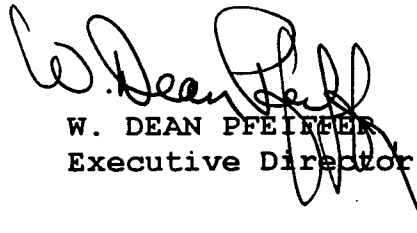
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director